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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,520	09/22/2003	Andre Stamm	107664.115 US8	5815

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EXAMINER	
SHEIKH, HUMERA N	

ART UNIT	PAPER NUMBER
1615	

MAIL DATE	DELIVERY MODE
11/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/665,520	Applicant(s) STAMM ET AL.	
	Examiner Humera N. Sheikh	Art Unit 1615	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 November 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's argument that "Curtet does not disclose the claimed suspensions" and that the "instant suspension is an intermediate product, used in the manufacture of a final composition" was not persuasive since the instant claims as recited do not require that the suspensions be an intermediate product, used to manufacture a final composition. Thus, Applicant's arguments do not establish the scope of claims being presented. Applicant argued "Curtet only discloses solid dosage forms; it is not disputed that a suspension is a liquid formulation; Duclos cannot fill the gap between the solid dosage form of Curtet and the instant liquid suspension". This argument was not persuasive since the secondary reference of Duclos was relied upon primarily for the teaching of poorly soluble drugs formulated in suitable suspension forms. Duclos further teaches inclusion of solubilizing agents, as identified by Applicant. Thus, Duclos resolves this deficiency of Curtet. Applicant argued, "Curtet teaches away from a suspension and requires the surfactant to be in solid form, whereas the claimed invention requires the surfactant or polymer to be in solution". This argument was not persuasive, since Ikeda was relied upon for the teaching of suspension forms. Moreover, Applicants have not demonstrated any unexpected results which accrue from the suspension as instantly claimed herein. Applicant argued, "Curtet requires that the fenofibrate and solid surfactant be co-micronized and requires a solid surfactant and a powder and thus a solid (dosage form). By changing from a solid into a liquid composition, the principle of operation of Curtet would be changed". Admittedly, Curtet requires co-micronization of drug (fenofibrate) and surfactant and does not specify a suspension. However, Ikeda, as stated above, was relied upon for the explicit teaching of compositions comprising fibrate compounds, such as fenofibrate, whereby the compositions are provided in the form of suspensions. Ample motivation is provided to combine Ikeda within Curtet to obtain a suspension formulation as claimed herein. No patentable distinction has been observed in the instant process claimed over the teachings of the art of record. Further, for the reasons advanced in the Final Office Action, Applicant's arguments remain unpersuasive.

HUMERA N SHEIKH
PRIMARY EXAMINER